**DNA tests free man after 28 years in prison**

**Conviction based on lab work that has been refuted**

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WASHINGTON - A man who spent 28 years behind bars for a rape and murder he said he did not commit walked out of a federal prison in Arizona yesterday with $75 and a bus ticket to Ohio after DNA testing showed he was innocent.

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The conviction of Donald Eugene Gates, 58, was based largely on the testimony of an FBI forensic analyst whose work later came under fire and a hair-analysis technique that has been discredited.

“I feel beautiful,’’ Gates, 58, told the Associated Press by telephone after leaving the US penitentiary in Tucson.

Hours before, the same judge who had presided over Gates’s trial years ago in the District of Columbia Superior Court ordered his release.

Prosecutors had agreed that Gates should be released. However, at their request, Senior Judge Fred B. Ugast delayed Gates’s formal exoneration until next week to give the government an opportunity to conduct one more round of DNA testing.

Ben Friedman, a spokesman for the US attorney’s office in Washington, said Gates would be the first defendant from the district who spent significant time in prison to be exonerated based on DNA evidence.

Gates was convicted of rape and murder in the 1981 killing of Catherine Schilling, 21, a Georgetown University student, in Washington’s Rock Creek Park. He was sentenced to 20 years to life in prison.

But the conviction was based largely on the testimony of FBI hair analyst Michael P. Malone, whose work came under fire in 1997. At that time, the FBI’s inspector general found that Malone gave false testimony in proceedings that led to the impeachment and ouster of US District Judge Alcee Hastings in 1989.

Ugast was incredulous that prosecutors had failed to inform him after Malone’s work was called into question. He ordered the US attorney’s office to review all its cases in which Malone testified, something he said should have been done earlier.

Sandra K. Levick, one of Gates’s attorneys from the District of Columbia Public Defender Service, said she came across the inspector general’s report while doing her own research for the case. After a Freedom of Information Act request, she obtained information showing that the FBI had issued warnings about the work of Malone and 12 other analysts who were criticized by the inspector general. As part of a review requested by the FBI, prosecutors confirmed they had relied on Malone’s work to obtain Gates’s conviction.

Assistant US Attorney Joan Draper said she was unaware of the problems with Malone’s testimony until the defense filed its motion this month seeking to have Gates’s conviction thrown out.

Based on Malone’s report, prosecutors had argued that hairs taken from Gates and hairs found on the victim were “microscopically indistinguishable.’’

The technique he relied on, microscopic hair analysis, has been discredited, Levick said.http://cache.boston.com/bonzai-fba/File-Based_Image_Resource/dingbat_story_end_icon.gif